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JUL 29 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, Clerk
By *J. White*, Deputy Clerk

UNITED STATES OF AMERICA :
ex rel. RONI BIRKHOFER,

Plaintiff, : CIVIL ACTION NO.

vs. : 1:07-CV-2917-BBM

ATLANTA SPINE AND BRAIN

REHABILITATION, P.C., ;

DANIEL A. DANYO, M.D.; and

BECKY DANYO,

**FILED EX PARTE AND
UNDER SEAL**

Defendants. :

**THE GOVERNMENT'S NOTICE OF ELECTION TO INTERVENE
IN PART AND TO DECLINE TO INTERVENE IN PART**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4), the United States notifies the Court of its decision to intervene in part of this action and to decline to intervene in part of this action. The United States intervenes in that part of the action which alleges that defendants: (1) added a billing modifier without appropriate justification that increased reimbursement for office visits ("Modifier 25 allegations"); (2) billed for contrast dye used in needle placement procedures well in excess of the amount actually used in the procedures ("Isovue allegations"); (3) falsely billed physician services for services performed by a physician's assistant ("'incident to' allegations"); and (4) falsely billed for services that were experimental and not Medicare-covered services ("pulsed

radiofrequency ablation (PMRA) allegations"). The United States declines to intervene in that part of the action which alleges billing irregularities with respect to the filling of pain pumps at the clinic. The United States intends to file a complaint within sixty days.

Although the United States declines to intervene in a portion of the action, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the declined portion of the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." Id. Therefore, the United States requests that, should either the relator or the defendant propose that the part of the action in which the United States has not intervened be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action, even as to the non-intervened part of this action, be served upon the United States; the United States also requests that all orders issued by the Court be sent to the Government's counsel. The United States reserves its right to order any deposition

transcripts and to intervene in the portion of this action in which it is declining to intervene today, for good cause, at a later date.

Finally, the United States requests that the relator's Complaint, this Notice, and the attached proposed Order be unsealed. The United States requests that all other papers on file in this action remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Respectfully submitted,

DAVID E. NAHMIAS
United States Attorney
Northern District of Georgia

Mina Rhee

MINA RHEE
Assistant United States Attorney
Georgia Bar No. 602047
Mina.Rhee@usdoj.gov
Northern District of Georgia
600 United States Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303
Tel: (404) 581-6302
Fax: (404) 581-6163

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to LR 7.1.D., NDGa., that the foregoing Memorandum of Law by plaintiff United States of America was prepared in 12 point Courier New font.

Mina Rhee
Mina Rhee
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that the United States' NOTICE OF ELECTION TO INTERVENE IN PART AND TO DECLINE TO INTERVENE IN PART and PROPOSED ORDER, were served by mailing true copies thereof by first class mail, with adequate postage affixed thereto, addressed to:

Mike Bothwell
Julie K. Bracker
Bothwell Bracker & Vann
304 Macy Drive
Roswell, GA 30075

This 29th day of July, 2009.

Mina Rhee
Mina Rhee
Assistant United States Attorney

THESE DOCUMENTS HAVE NOT BEEN SERVED UPON THE DEFENDANT BECAUSE THIS CASE REMAINS UNDER SEAL.